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National Association of State PIRGs

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The Honorable John Dingell
United States House of Representatives
2328 Rayburn House Office Building
Washington, DC 20500

Dear Representative Dingell:

We are writing on behalf of U.S. Public Interest Research Group (U.S. PIRG), the national lobbying office for state-based Public Interest Research Groups across the country. The state PIRGs are independent, non-profit, non-partisan public interest advocacy organizations. We are writing to commend the introduction of H.R. 526, the Bipartisan Patient Protection Act of 2001. American consumers have waited far too long for meaningful patient protections and this legislation is a good remedy for many of the pervasive problems plaguing the current health care system. H.R. 526 is the only legislation introduced in the 107th Congress that prioritizes patients over profits.

We are encouraged that the Bipartisan Patient Protection Act is broad in scope. Specifically, the application of this legislation to all Americans with employer based private health insurance is critical to providing quality health care to all consumers who receive their health care from health maintenance organizations. We are also encouraged that this legislation would eliminate ERISA's provisions that effectively carve out legal immunity for managed care organizations. Consumers must be able to hold their health plans accountable when the plan's decision harms or kills them. Further, legal accountability is an important deterrent factor that has proven successful in preventing entities from acting wrongfully. We applaud that the Bipartisan Patient Protection Act would not preempt state laws that have successfully protected patient rights across the country.

While this legislation would afford consumers certain important rights, H.R. 526 should go further. We urge you to strengthen or eliminate certain provisions that do not adequately afford consumers critical protections. We are concerned that this legislation may prevent consumers from gaining access to the external appeals process due to the requirement that only patients, and not physicians, can initiate the appeals process. Many patients do not know that they can seek recourse through an external appeals process. Therefore, it is very important that doctors have the ability to initiate this process on behalf of their patients in need of redress. We urge you to add language to H.R. 526 that would give physicians this important tool.

In addition, the bill's bifurcation of lawsuits into state and federal actions is problematic. The lines which have been drawn in the legislation defining whether a case will proceed to state or federal court are far from clear: medical necessity and contractual claims will likely be intermingled in most cases and distinguishing between the two will be almost impossible. The bifurcated system will also lead to forum shopping in which defendant HMOs will argue that the factual question of the case concerns the contractual obligations of the plan with the sole purpose of obtaining the federal forum. Even a bifurcated system is better than a system where an HMO can't be held accountable at all, however, the system enumerated in this legislation still poses significant barriers to consumers seeking redress from their HMO.

We are encouraged that the Bipartisan Patient Protection Act includes a "civil assessment" that a consumer may obtain after being harmed by their HMO, however, the cap on the "civil assessment" enumerated in the legislation artificially limits the amount of money assessed to an HMO which committed a violation of their contractual obligation to a consumer. Wrongdoers should be held accountable and juries have traditionally been responsible for determining the amount of damages a defendant must pay. The "civil assessment" cap sets a dangerous precedent for carving away essential rights. We urge you to remove this cap from H.R. 526.

PIRG is also concerned about a provision that would prevent consumers from joining together in class actions for certain ERISA claims. The threat of class actions deters anti-consumer behavior. Class actions protect consumers by offering a valuable mechanism for combining claims that otherwise might not be litigated individually. Yet, the Bipartisan Patient Protection Act bars consumers from joining in class action law-suits under ERISA for claims for benefits due, claims to enforce rights under the health plan, claims to clarify rights to future benefits, claims for breach of fiduciary duties, and claims to enjoin violations of ERISA or of the law. Currently, consumers have the right to join together in class actions for these rights. In addition, class action suits effectively conserve precious judicial resources by aggregating numerous individual claims into one efficient case. We urge you to eliminate this provision, which substantially reduces the power and effectiveness of one of the most useful legal tools for consumers.

Patients have waited far too long for meaningful protections. We look forward to working with you in this effort to provide patients with a meaningful Patients' Bill of Rights.

Sincerely,



Rachel Weintraub
Staff Attorney

cc: The Honorable Greg Ganske